

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3 * * * * *

4 ESTATE OF MICHAEL EDWARD BELL, by Special
5 Administrator Michael Martin Bell, KIM MARIE
6 BELL, MICHAEL MARTIN BELL, and SHANTAE BELL,
7 Plaintiffs,

8 vs. Civil Action No. 05-C-1176

9 OFFICER ERICH R. STRAUSBAUGH, OFFICER ERICH S.
10 WEIDNER, LIEUTENANT DAVID H. KRUEGER, OFFICER
11 ALBERT B. GONZALES, KENOSHA POLICE DEPARTMENT,
12 CITY OF KENOSHA,
13 Defendants.

14 * * * * *

15 VIDEOTAPED DEPOSITION OF DAVID H. KRUEGER

16 TAKEN AT: KENOSHA CITY HALL
17 LOCATED AT: 625 52nd Street
18 Kenosha, Wisconsin
19 April 30, 2007
20 11:09 a.m. to 12:31 p.m.

21 REPORTED BY ANNICK M. TRIMBLE
22 REGISTERED PROFESSIONAL REPORTER

23 * * * * *

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2

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22 Mr. Kevin P. Reak
23 219 North Milwaukee Street #500
24 Milwaukee, Wisconsin 53202-5818
25 Appearing on behalf of the Defendants.

26

27 ALSO PRESENT: Todd Campbell,
28 videographer, Albert Gonzales, Erich
29 Strausbaugh, Erich Weidner, Randall Burner

30

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32

I N D E X

33

34 Examination by: Page

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Mr. Dunphy 5

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E X H I B I T S

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45 4500 series revolver diagram	22
46 Taser recorded firing data	41
47 Transcript	42
48	..... Photograph	48
49	..... Death report	49
50	..... Laser copy of photo	50
51	..... Laser copy of photo	50
52	..... Laser copy of photo	50
53	..... Laser copy of photo	50
54	..... Kenosha Police Department supplementary report	50
(The original exhibits were attached to the original transcript. Copies were provided to all counsel.)		
(The original transcript was delivered to Attorney Dunphy.)		

1 A Yes, sir.

2 Q Was there a tape recording made of the
3 discussion that you had or the interview that
4 you had with Detective Niccolai?

5 A Not that I'm aware of.

6 Q Do you know if Detective Niccolai took any
7 notes of the discussion he had with you?

8 A I don't know.

9 Q Now, at the time that Michael Bell was shot you
10 were behind Michael Bell, correct?

11 A That's correct.

12 Q That you had your arms around Michael Bell's
13 shoulders?

14 A Yes, sir.

15 Q That you had pinned Michael Bell against the
16 left front fender of the car?

17 A Yes, sir.

18 Q That at the time that you had Michael Bell
19 pinned against the left front fender of the car
20 he was trying to push away from the car?

21 A I believe so, yes.

22 Q That you saw Officer Gonzales draw his gun from
23 his holster and put it to the side of
24 Mr. Bell's head?

25 A No, I don't remember seeing him draw his gun

1 from the holster, but I remember he had his gun
2 to Michael Bell's head.

3 Q Do you know when it was that Officer Gonzales
4 drew his weapon from his holster?

5 A No, sir.

6 Q At the time that Mr. Bell was shot he was bent
7 over the front of the car and you were still
8 behind him?

9 A Is that a question? Yes.

10 Q But you were in more of an upright position at
11 the time that Michael Bell was shot?

12 A Yes.

13 Q At the time that Michael Bell was shot you do
14 not know if Michael Bell actually had control
15 of Officer Strausbaugh's gun?

16 A I do not know.

17 Q You asked Strausbaugh whether Michael Bell had
18 his gun?

19 A I may have. I don't remember that exactly.

20 Q Do you remember saying that if he's got your
21 gun we're going to have to shoot him?

22 A Yes, sir.

23 Q Did you give an order to Officer Gonzales to
24 shoot Mr. Bell?

25 A Yes, sir.

1 Q Do you know how many times Officer Gonzales
2 pulled the trigger?

3 A I don't know for a fact, no.

4 Q Did you hear his testimony this morning that he
5 had pulled the trigger twice?

6 A Yes.

7 Q Do you have any reason to doubt that?

8 A No.

9 Q Do you know if you gave the order to shoot
10 before Officer Gonzales pulled the trigger the
11 second time?

12 A I remember the gun going off simultaneous to me
13 yelling, "Shoot."

14 Q Did Michael Bell have his jacket on when you
15 had him pinned against the hood of the car?

16 A I don't know.

17 Q When you had him pinned against the hood of the
18 car was Michael Bell's upper body leaning
19 forward over the hood?

20 A Yes.

21 Q So it would be as if he were leaning forward
22 from the waist?

23 A Yes.

24 Q Do you know if any part of Michael Bell's upper
25 body was on the hood of the car at the time

1 Officer Gonzales shot him?

2 A I don't believe it was.

3 Q Was Michael Bell standing up at the time of the
4 shoot or --

5 A He was standing.

6 Q Michael Bell was standing up at the time that
7 Officer Gonzales shot him?

8 A Yes.

9 Q Are you able to demonstrate for the camera how
10 Michael Bell was standing at the time he was
11 shot by Officer Gonzales?

12 A To the best of my recollection, this being the
13 hood of the car, he was bent over like such.
14 (Indicating.)

15 Q All right. And you were looking to your left
16 at the time after Officer Gonzales shot Michael
17 Bell?

18 A Yes. My head was to the left of Michael Bell's
19 body.

20 Q And you were looking towards the -- towards
21 your left?

22 A I was looking more or less to the left side of
23 Michael Bell.

24 Q Were you able to see the gun pressed against
25 the head of Michael Bell?

1 A Yes.

2 Q Would you please stand up in the position that
3 you had Michael Bell at the time the shot was
4 fired?

5 A I was standing behind him, and I had my arms
6 around his upper shoulders.

7 Q And again, Michael Bell was leaning in what
8 posture at the time he was shot?

9 A He was -- he was in front of me and he was more
10 or less like this, leaning over.

11 Q Okay. And officer -- well, strike that.
12 What side of the head was Michael Bell
13 shot in?

14 A Left side.

15 Q And you could see that because Officer Gonzales
16 was to your left?

17 A Yes, sir.

18 Q And you saw Officer Gonzales with his gun out
19 pointed to -- pointed towards Michael Bell's
20 head?

21 A Yes.

22 Q And you saw the muzzle of the gun placed
23 against Michael Bell's head?

24 A Yes.

25 Q And did you see the fact at the time of the

1 weapon that's shown in Exhibit 45, or I'll call
2 it inartfully an upright position, does that
3 generally show the orientation of the weapon at
4 the time Officer Gonzales fired it?

5 MR. GUNTA: Same objection. Go ahead
6 and answer it if you can.

7 THE WITNESS: Yeah, I don't recall.

8 BY MR. DUNPHY:

9 Q Is there anything in your recollection at all
10 about how Officer Gonzales had his weapon
11 orientated at the time he pulled the trigger
12 other than it was against the left side of
13 Michael Bell's head?

14 A No, sir.

15 Q When Officer Gonzales pulled the trigger I
16 understand that he had the gun pointed towards
17 the windshield?

18 A Yes, in that direction, yes.

19 Q And the windshield would have been to your
20 right?

21 A Yes.

22 Q And to Michael Bell's right?

23 A Yes.

24 Q Lieutenant Krueger, you went back to the scene
25 of the shooting the same day of the shooting,

1 Q Okay. Very fair comment. Let me ask you a
2 couple questions to help me understand it
3 better. Were you standing approximately at the
4 point where the tire is located?

5 A Yes.

6 Q But you're standing away -- your feet are away
7 from the tire?

8 A That's correct.

9 Q Okay. Can you give me your best estimate as to
10 how far your feet were away from the tire? Are
11 we talking just a couple inches or are we
12 talking feet? Just give me your best estimate.

13 A Probably the size of Michael Bell's shoe,
14 because he was standing between me and that
15 car.

16 Q Okay. So Michael's Bell's legs would have been
17 up against the tire area of that fender?

18 A Yes.

19 Q All right. With that explanation why don't we
20 try Exhibit 36. Let me ask you whether it's
21 easier for you to show where you were standing
22 on Exhibit 36.

23 A Yes, sir.

24 Q Okay. Let's use that then. Please take the
25 red marker and show us where your feet would

1 Q All right. And when you grabbed Michael Bell
2 around the shoulders were you able to slide
3 your arms down around Michael Bell's bicep
4 area?

5 A I don't know if I was able to. I was probably
6 able to do so.

7 Q I believe you described what you did was put
8 him in a bear hug?

9 A Yes.

10 Q Were you able to control Michael Bell's arms at
11 least down to the elbows with the bear hug?

12 A No.

13 Q Were you able to close your hands around
14 Michael Bell?

15 A No.

16 Q You weren't able to lock your hands?

17 A No.

18 Q Were you able to keep your arms around Michael
19 Bell in the area of his biceps?

20 A For the most part, yes.

21 Q And did you have your arms around Michael
22 Bell's biceps right up to the point where
23 Officer Gonzales shot Michael Bell?

24 A His biceps or upper shoulder, somewhere in that
25 immediate area, yes.

1 Q All right. So once you got him in a bear hug
2 you were able to keep him in a bear hug until
3 he was shot?

4 MR. GUNTA: Objection to the form of
5 the question.

6 THE WITNESS: I had him in a bear hug
7 until he was shot, yes.

8 BY MR. DUNPHY:

9 Q At any time from the time that you put Michael
10 Bell in a bear hug until the time that he was
11 shot were you able to see Officer Strausbaugh's
12 holster?

13 A No.

14 Q Were you able to see Officer Strausbaugh's gun?

15 A No.

16 Q Were you able to see Michael Bell's hands?

17 A No.

18 Q Were you able to feel Michael Bell's arms from
19 the elbow down to his hands?

20 A No.

21 (Exhibit No. 46 marked for identification.)

22 BY MR. DUNPHY:

23 Q Lieutenant, I'm going to show you what we've
24 marked as Exhibit 46. It's a copy of a taser
25 usage printout that was provided to us by the

1 shot Michael Bell?

2 A No.

3 Q Was Officer Gonzales -- Strike that.

4 At any time that you had Michael Bell in a
5 bear hug was Officer Gonzales ever on your
6 right side?

7 A I don't ever recall him being on my right.

8 Q Given the position that Michael Bell was in at
9 the time that he was shot, is it physically
10 possible in your estimation for Officer
11 Gonzales to have shot Michael Bell in the right
12 side of the head?

13 A Not in my estimation, no.

14 Q Do you ever remember Officer Gonzales's gun
15 passing in front of your face between you --
16 your face and the back of Michael Bell's head?

17 A I don't believe so.

18 Q Was Officer Gonzales's gun pointed generally in
19 a line parallel to the ground at the time he
20 fired it?

21 A Yes.

22 Q And was it pointed in a way that the right side
23 of his weapon would have been generally facing
24 you?

25 A Yes.

1 when you first saw them?

2 A Mark an X on here?

3 Q Yes, right on the exhibit.

4 A (Witness complies.)

5 Q And then if you'd simply put your initials next
6 to it. And now if you'd kindly take your pen
7 and just use the screen and point to the
8 approximate location of those individuals?

9 A I believe it was right in here. (Pointing.)

10 Q So if I move the cursor, am I in the right
11 spot?

12 A Yes.

13 Q All right. Thank you.

14 (Exhibit No. 49 marked for identification.)

15 BY MR. DUNPHY:

16 Q Lieutenant Krueger, I am going to show you
17 what's been marked as Exhibit 49 which is a
18 certified copy of the coroner's report provided
19 to me by the City of Kenosha, and if you look
20 at page 2 of that exhibit you will see listed
21 autopsy findings. And I(H) is the one I'd like
22 to you look at, please, and then tell me when
23 you're finished reading it.

24 MR. GUNTA: Where are we? I'm sorry,
25 what's the Bate's stamp number at the bottom?

1 4?

2 THE WITNESS: 4. I've finished
3 reading it.

4 (Exhibit Nos. 50-54 marked for identification.)

5 BY MR. DUNPHY:

6 Q Lieutenant Krueger, I'm going to show you page
7 2 of a report, supplementary report prepared by
8 Officer Todd Thorn, death investigation
9 evidence process, and we've marked it beginning
10 with page 2 in Exhibit 54, and at this point
11 I'm really only interested in this page of the
12 document. Do you see that he's identified the
13 evidence that he's gathered using letters?

14 A Yes.

15 Q And do you see that he has letter V assigned to
16 a specific piece of evidence?

17 A Yes, I do.

18 Q And what letter -- what evidence is letter V
19 assigned to?

20 A A spent .45 caliber casing.

21 Q To your knowledge is there any weapon that was
22 fired that evening other than Officer
23 Gonzales's .45 automatic, semiautomatic, excuse
24 me?

25 A No.

1 of his head?

2 MR. GUNTA: Objection to the form of
3 the question, foundation qualification.
4 Subject to the objection you can answer.

5 THE WITNESS: Please repeat that.

6 BY MR. DUNPHY:

7 Q Is there any way that Officer Gonzales in the
8 orientation in which he's testified under oath,
9 the orientation that he was standing and the
10 orientation of his weapon at the time he shot
11 Michael Bell could physically have shot Michael
12 Bell so the bullet would go from the right side
13 of Michael's head to the left side of Michael's
14 head?

15 MR. GUNTA: Objection to the form of
16 the question.

17 THE WITNESS: I suppose it's
18 possible, yes.

19 BY MR. DUNPHY:

20 Q Could he have done that without in effect
21 reaching around Michael Bell's head and
22 pointing the firearm so that it was pointing
23 back at Officer Gonzales?

24 MR. GUNTA: Same objection.

25 THE WITNESS: He would have had to

1 have reached around, that's my opinion.

2 BY MR. DUNPHY:

3 Q And that is not what you saw that evening, was
4 it?

5 A No, sir.

6 Q Can you think of any way that when the shell
7 casing was ejected from Officer Gonzales's
8 Smith & Wesson .45 semiautomatic handgun, that
9 it would have ejected to the left, given the
10 orientation that you've described?

11 MR. GUNTA: Same series of
12 objections.

13 THE WITNESS: I don't know how it
14 could have ejected to the left.

15 BY MR. DUNPHY:

16 Q Is it still your testimony under oath that
17 Officer Gonzales was standing in front of the
18 Nissan at the time he put a bullet into Michael
19 Bell's head?

20 A Yes, sir.

21 Q Is it still your testimony under oath that
22 Officer Gonzales's gun was pointing at the
23 windshield at the time he put a bullet through
24 Michael Bell's head?

25 A Yes.

EXHIBIT
50
Krueger
4-30-07
PELAGAD 800-831-6909





PENSCAD 800-631-6899
EXHIBIT
52
Krueger
4-30-07

